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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/976,312	10/11/2001	Yoshinori Kumasaka	SHC0151	1877

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EXAMINER

ANDERSON, CATHERINE L

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 03/09/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/976,312

Applicant(s)

KUMASAKA ET AL.

Examiner

C. Lynne Anderson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 8-10, and 12 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nishikawa et al. (5,591,155).

Nishikawa discloses elastically stretchable disposable pants, as shown in figures 1 and 6, comprising a pair of elastically stretchable sheet members 10, a front waist region 36a, a rear waist region 36b, a waist opening and a pair of leg openings defined by bonding together the front and rear waist regions 36a and 36b. Substantially inelastic guide zones 52, as shown in figure 5, are provided between the central longitudinal axis and each of the side edges and have upper terminal ends which terminate near the waist opening and lower terminal ends that are spaced apart from the leg openings. Together, the inelastic guide zones 52 comprise an array of discrete inelastic portions, the array being made up of the two inelastic guide zones 52. The inelastic guide zones 52 prevent stretching along a direction parallel to the central longitudinal axis. The guide zone 52 is disclosed in line 8 of the abstract as being inelastic.

With respect to claim 2, the elastically stretchable sheet members 10 comprise layers of elastically stretchable fibrous nonwoven fabric, as disclosed in column 3, lines 49-59. The guide zones 52 comprise portions of the nonwoven fabric that are molten and solidified, as disclosed in column 8, lines 5-9.

With respect to claim 4, a pad member comprising a liquid-pervious topsheet 33, a liquid-impervious backsheet 32, and a liquid absorbent core 31 is attached to an inner surface of the pants, as disclosed in column 5, lines 35-40, and shown in figure 6.

With respect to claim 8, the upper terminal ends of the inelastic guide zones 52 may be defined as being spaced apart from the waist opening.

With respect to claim 9, the array is linear, as shown in figure 1.

With respect to claim 10, the article further comprises a pad member comprising a liquid-pervious topsheet 33, a liquid-impervious backsheet comprising a film, as described in column 6, line 50, and a liquid absorbent core 31, as shown in figure 6. The backsheet is attached to an inner surface of the pants, which comprise a nonwoven material, as described in column 6, line 50.

With respect to claim 11, the pants comprise a liquid-pervious topsheet 33, a liquid-impervious backsheet 32, and a liquid absorbent core 31, as shown in figure 6, the topsheet 33 and backsheet 32 extending from the front to the rear waist region. The backsheet 32 is formed from the elastically stretchable sheet members

With respect to claim 12, the inelastic guide zones 52 are located aside along the side edges of the front and rear waist regions, as shown in figure 1.

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Claims 1, 4, and 6-8 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Van Gompel (4,940,464).

Van Gompel discloses elastically stretchable disposable pants, as shown in figure 1, comprising a pair of elastically stretchable sheet members 24, a front waist region 42, a rear waist region 44, a waist opening 10 and a pair of leg openings 12, 14 defined by bonding together the front and rear waist regions 42, 44. Substantially inelastic guide zones 28, as shown in figure 5, are provided between the central longitudinal axis and each of the side edges 50, 56, 62, 68 and have upper terminal ends which terminate near the waist opening 10 and lower terminal ends that are spaced apart from the leg openings 12, 14. Together, the inelastic guide zones 28 comprise an array of discrete inelastic portions, the array being made up of the two inelastic guide zones 28. The inelastic guide zones 28 prevent stretching along a direction parallel to the central longitudinal axis. The guide zones 28 are disclosed as being substantially inelastic in column 3, lines 24-25.

With respect to claim 4, the pants further comprise a pad member comprising a liquid pervious topsheet 88, a liquid impervious backsheet 90, and a liquid absorbent core 92.

With respect to claim 6, the guide zones 28 are located aside toward the side edge portions 50, 56, 62, 68 of the front and rear waist regions 42, 44, as shown in figure 5.

With respect to claim 7, the guide zones 28 are located in a vicinity of the pad member, as shown in figure 5.

With respect to claim 8, the upper terminal ends of the inelastic guide zones 28 may be defined as being spaced apart from the waist opening 10.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 11, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishikawa et al. (5,591,155) as applied to claims 1 and 2 above, and in view of Proxmire (4,936,840).

Nishikawa discloses all aspects of the claimed invention with the exception of the backsheet comprising the pair of elastically stretchable sheet members. Proxmire teaches the use of an elastically stretchable sheet member as a liquid-impermeable backsheet, as disclosed in column 5, lines 42-43. The elastically stretchable backsheet gives the pants a close and secure fit, as disclosed in column 5, lines 55-60. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the backsheet of Nishikawa from an elastically stretchable sheet member, as taught by Proxmire, to give the pants a close and secure fit.

With respect to claim 13, the substantially inelastic guide zones disclosed by Nishikawa are located near, or in a vicinity of, the pad member, as shown in figure 1.

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Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gompel et al. (4,940,464).

Van Gompel discloses elastically stretchable disposable pants, as shown in figure 1, comprising a pair of elastically stretchable sheet members 24, a front waist region 42, a rear waist region 4, a waist opening 10 and a pair of leg openings 12, 14 defined by bonding together the front and rear waist regions 42, 44. Substantially inelastic guide zones 28, as shown in figure 5, are provided between the central longitudinal axis and each of the side edges 50, 56, 62, 68 and have upper terminal ends which terminate near the waist opening 10 and lower terminal ends that are spaced apart from the leg openings 12, 14. The inelastic guide zones 28 prevent stretching along a direction parallel to the central longitudinal axis. The guide zone 28 is disclosed as being substantially inelastic in column 3, lines 24-25. The guide zones 28 are bonded to the inner surface of the elastically stretchable sheet members 24, as shown in figure 1.

It would have been an obvious matter of design choice to bond the inelastic guide zones to the outer surface of the elastically stretchable sheet members, since the applicant has not shown that such an attachment serves any particular purpose or solves any stated problem, and it appears the invention would function equally well with the inelastic guide zones bonded to either the inner or outer surface of the elastically stretchable sheet material.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Van Gompel et al. (4,940,464) in view of Proxmire (4,936,840).

Van Gompel discloses all aspects of the claimed invention with the exception of the backsheet comprising the pair of elastically stretchable sheet members. Proxmire teaches the use of an elastically stretchable sheet member as a liquid-impermeable backsheet, as disclosed in column 5, lines 42-43. The elastically stretchable backsheet gives the pants a close and secure fit, as disclosed in column 5, lines 55-60. It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the backsheet of Van Gompel from an elastically stretchable sheet member, as taught by Proxmire, to give the pants a close and secure fit.

Response to Arguments

Applicant's arguments filed 22 December 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., each of the inelastic guide zones comprising an array) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims merely disclose that the inelastic guide zones comprise an array. The articles of Nishikawa and Van Gompel each have two inelastic guide zones that together comprise an array.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Lynne Anderson whose telephone number is (703) 306-5716. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CUA
cla
March 5, 2004



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